

City Council Introduction: **Monday**, January 7, 2002
Public Hearing: **Monday**, January 14, 2002, at **1:30 p.m.**

Bill No. 02-2

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3345**, from H-1 Interstate Commercial to H-3 Highway Commercial, requested by Mark Hunzeker on behalf of Whitehead Oil Company, on property generally located on the southeast corner of North 56th Street and Interstate 80.

STAFF RECOMMENDATION: **Denial.** As an alternative, the staff recommends a change of zone to H-4 or that the zoning remain H-1.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 11/14/01 and 12/12/01
Administrative Action: 12/12/01

RECOMMENDATION: Approval (8-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn voting 'yes'; Bills absent).

FINDINGS OF FACT:

1. This application was originally filed as a request from H-1 to H-4 on October 18, 2001, and was scheduled for public hearing before the Planning Commission on November 14, 2001, with a staff recommendation of approval.
2. On November 12, 2001, the applicant submitted a letter requesting to amend the application to a change of zone from H-1 to H-3, instead of H-4 (See p. 12). The Planning Commission deferred the public hearing until December 12, 2001, in order to properly advertise the revised application.
3. The staff recommendation to **deny** the change of zone to H-3 is based upon the "Analysis" as set forth on p.4-5, concluding that a change to H-3 is not in conformance with the Comprehensive Plan.
4. The applicant's testimony is found on p.6-8, and the Exhibit submitted by the applicant is found on p.13.
5. There was no testimony in opposition.
6. On December 12, 2001, the Planning Commission disagreed with the staff recommendation and voted 8-0 to recommend approval of the change of zone to H-3.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: December 28, 2001

REVIEWED BY: _____

DATE: December 28, 2001

REFERENCE NUMBER: FS\CC\2002\FSCZ3345

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3345

DATE: November 27, 2001

PROPOSAL: A change of zone from H-1, Interstate Commercial District to H-3, Highway Commercial District.

LAND AREA: 1.45 Acres, more or less

CONCLUSION: Not in conformance with the Comprehensive Plan.

<u>RECOMMENDATION:</u>	H-3, Highway Commercial.....Denial Recommend H-4, General Commercial or remain H-1
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 17 Irregular Tract, located in the NW 1/4 of Section 28 T11N R7E, in Lancaster County, Nebraska.

LOCATION: Generally located on the southeast corner of North 56th Street and Interstate 80.

APPLICANT: Whitehead Oil Company
P.O. Box 30211
Lincoln, NE 68503

OWNER: Same

CONTACT: Mark Hunzeker
Pierson, Fitchett, Hunzeker, Blake and Katt
1045 Lincoln Mall, Suite 200
Lincoln, NE 68508

EXISTING ZONING: H-1, Interstate Commercial District

EXISTING LAND USE: Vacant Gas Station

SURROUNDING LAND USE AND ZONING:

North:	Interstate & Agriculture	AG, Agricultural District
South:	Commercial & Warehouse	H-4, General Commercial District
East:	Commercial & Retail	H-4
West:	Undeveloped & Gas Station	H-1, Interstate Commercial District

HISTORY: On June 15, 1998, City Council approved Change of Zone #3123 from AG, Agriculture to H-4, General Commercial to the south of this site.

On July 14, 1997, City Council approved Change of Zone #3061 from AG, Agriculture to H-1, Interstate Commercial to the west of this site.

On April 7, 1997, City Council approved Change of Zone #3052 from AG, Agriculture to H-4, General Commercial to the east of this site.

On July 1, 1996, City Council approved Change of Zone #2992 from AG, Agriculture to H-1, Interstate Commercial to the southwest of this site.

On March 13, 1995, City Council approved Change of Zone #2883 from H-1, Interstate Commercial to H-4, General Commercial to the south of this site.

On July 5, 1994, City Council approved Change of Zone #2831 from AG, Agriculture to H-4, General Commercial to the northeast of this site.

The area was zoned AA, Rural and Public Use District and H-S, Highway Service until it was updated to AG, Agricultural and H-1, Interstate Commercial during the 1979 zoning update

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan shows this area as Commercial (page 39).

The Comprehensive Plan indicates a goal of urban design is to “Protect and improve important vistas and entryways into the city” (page 175). Interstate 80 is an entryway into the city at 56th Street. This area is also within a capitol view corridor.

TRAFFIC ANALYSIS: The Comprehensive Plan Street and Road Classification indicates North 56th Street as an Urban/Rural Principal Arterial, Arbor Road as an Urban/Rural Minor Arterial and Interstate 80 as an Urban/Rural Interstate Expressway (Page 92).

Arbor Road is within a public way corridor. Arbor Road is shown with 120 feet of right-of-way on the Future Road Improvements map in the Comprehensive Plan (Page 96)

AESTHETIC CONSIDERATIONS: This site is an entryway into Lincoln from Interstate 80. The H-3 zone is inconsistent with surrounding zoning. Parking in the front yard setback as allowed in H-3 is inconsistent with the definite front yards of the H-4 zoning district. More signs of greater magnitude are allowed in H-3 as outlined in the Zoning Ordinance. A consistent and appropriate zoning for the area is either H-1 or H-4 as the adjacent zones indicate.

ALTERNATIVE USES: H-4 Highway Commercial or H-1, Interstate Commercial.

ANALYSIS:

1. This is a request to change the zone from H-1, Highway Commercial District to H-3, Highway Commercial District.
2. The change of zone is not consistent with the H-4 zone on the east side of North 56th Street. Historically the area was zoned H-1, Interstate Commercial to serve Interstate 80. Over time, applications were made to change the zone from interstate commercial to a commercial district that allowed a broader range of commercial uses, H-4, General Commercial District as outlined in the history of this report. There is no land zoned H-3 in the near vicinity and would be out of place and character for the area.
3. H-1 is a zone reserved primarily for interstate-related commercial activities, such as restaurants, hotels & motels, and service stations. H-3 allows a wider variety of commercial uses, including warehouses, lumber yards and stores or shops for retail sales. Additionally, H-3 allows parking in the front yard, parking in the front yard for the sale and resale of vehicles with a special permit and a greater quantity of signs. H-4 is a zone which allows a wider variety of commercial uses, including warehouses, lumber yards and stores or shops for retail sales but does not permit parking in the front yard setback. The setback requirements for H-3 are inconsistent with the surrounding H-4 zoning.
4. The Comprehensive Plan shows this area as commercial, however, adjacent zoning and proximity to the entryway of Lincoln cannot be ignored. The Comprehensive Plan is clear that entryways are an important aspect of the City, one which needs to be protected. Despite the immediate intent of the applicant, the H-3 zoning would allow at its fullest use bottling works, creameries, motor home sales, and vehicles storage while waiting repair, all of which are either permitted or conditionally permitted and can have parking in the front yard setback. Specially permitted H-3 allows for the storage of vehicles for sale and resale on any portion of the lot where parking is permitted, including the front yard.
5. Due to the existence of H-4 zoning on the east side of N. 56th Street, there would not be a great impact of changing the zone to H-4 and would allow a much wider variety of uses than the existing H-1 zoning. Similar property should be treated similarly.
6. Height and area regulations for the H-4 zone are generally more restrictive in terms of required setbacks. It appears that the lot is developable with the required setbacks in any of the three commercial zones discussed. For example, H-1 requires a 25' front yard, H-3 requires a 30' front yard, however parking is allowed in the front yard setback, and H-4 requires a 50' front yard setback. Even though the applicant may not at this time plan to park in the 30' front yard setback, the H-3 zoning does not preclude the applicant from doing so.
7. Permitted signs for H-1 and H-4 are nearly identical as outlined in Section 27.69.047 of the Zoning Ordinance. H-3 allows more signs than both H-1 and H-4 as noted in Title 27.

8. The Public Works & Utilities Department has no objections to this request but notes that future access to this location will be limited because of the closeness to the intersection and the public way corridor roadway design.

Prepared by:

Becky Horner
Planner

CHANGE OF ZONE NO. 3345

PUBLIC HEARING BEFORE PLANNING COMMISSION:

November 14, 2001

Members present: Krieser, Newman, Steward, Bills, Taylor, Duvall, Carlson, Hunter and Schwinn.

Staff recommendation: Approval.

This application was removed from the Consent Agenda and had separate public hearing.

Becky Horner of Planning staff submitted a request from the applicant to revise the application to a request from I-1 to H-3 (instead of H-4), and to defer the hearing until December 12, 2001, for readvertising and notification.

Duvall moved to defer with new public hearing and administrative action scheduled for December 12, 2001, seconded by Bills and carried 9-0: Krieser, Newman, Steward, Bills, Taylor, Duvall, Carlson, Hunter and Schwinn voting 'yes'.

There was no other public testimony.

PUBLIC HEARING BEFORE PLANNING COMMISSION:

December 12, 2001

Members present: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn; Bills absent.

Staff recommendation: Denial.

Proponents

1. Mark Hunzeker appeared on behalf of **Whitehead Oil**. This property is located at 56th & Highway 77 (intersection of I-80 and Hwy 77). This property is a little over 1.5 acres, odd-shaped, nearly triangular, and has been zoned H-1 Highway Commercial for a very long time. There was a filling station which operated for some period of time and there is still a building on the property. It has had more than one operator. It has been through difficult times. It has never really been successful. Unfortunately, the H-1 zoning allows for a very limited range of uses, i.e. restaurants, service stations and hotels and motels. The applicant purchased this property some time ago and it has not been operated as a filling station by Whitehead Oil. This is simply an attempt to find a way to put this property to some use. In looking at potential hotels, motels, service stations and the like, it is apparent that this is not a good site for that and is not big enough.

The original application was for a change of zone to H-4 and was filed in error. The H-4 zoning district takes this piece of property from 1.6 acres down to less than .6 acre in terms of its usable area because of the setbacks imposed by that district. Furthermore, the H-4 District does not permit parking in the front yard, so it is a very difficult parcel to use with H-4 zoning. The application was revised to H-3 because of that. H-3 is very similar to H-4. The uses are nearly identical. The staff

report indicates that it is not consistent with H-4, but Hunzeker believes the uses in the H-3 are much more consistent with H-4 than the H-1. Furthermore, the staff report points out H-3 allows parking in the front yard, but Hunzeker pointed out that parking in the front yard is also allowed in the existing H-1. The setback requirements of H-3 are probably more consistent with the existing buildings east of 56th Street along Arbor Road than the 50' setback in the H-4 because all of the buildings were built prior to widening Arbor Road. These existing buildings are closer to the H-3 setback than the H-4.

Hunzeker further suggested that nobody does bottling works or creameries. We're not going to do that. It is silly to point out those things. Motor home sales can be accomplished in H-4. You can sell heavy equipment in H-4. There is nothing inconsistent about the uses allowed in H-3 versus H-4. The only real difference is that we have the ability to utilize that front yard for parking. We are trying to put this property to a reasonable use, consistent with the surrounding property, and H-3 is the district that allows us to do that in a reasonable manner. We think that this is an appropriate change. It is not inconsistent with the surrounding area.

Carlson inquired about signage. Will H-1 to H-3 provide other signage? Hunzeker suggested that the signage is also similar. It says in the report that there are more signs permitted in H-3 than H-1 and H-4. But Hunzeker believes that H-3 and H-4 are basically the same. There are very few differences in signage. The one big difference that stands out is that in H-1 you can do a pole sign near the interstate of up to 80' in height. You can't do that in H-3 or H-4. They are not requesting this change of zone for the purpose of signage.

Carlson asked whether the applicant has a potential use. Hunzeker responded, stating that they are just here to try to get this property zoned in a district that allows the property to be put to use. In the current state it is obvious that it is not going to be successful as a service station. We think it is too small and as configured it is just not usable for a motel or hotel, restaurants, etc. There is not enough in that area to justify even trying a restaurant.

Carlson inquired about the use options in the H-3. Hunzeker suggested that the H-3 gives a wide range of options. It is basically the same range that exists under H-4. In fact, a couple years ago there was a study being conducted that suggested combining all of the H districts into one.

Steward believes, however, that all of this thinking is new thinking since the purchase of the property. Hunzeker responded, stating that this property has been a separate lot since probably 1983.

There was no testimony in opposition.

Carlson asked staff to discuss the signage issue. Becky Horner of Planning staff believes that there are big differences in signage. H-3 allows one on-site ground sign and one pole sign per business per frontage. This property has double frontage so they would have double signs. This is different from H-1 and H-4. The interstate sign can be 360 sq. ft. versus 300 sq. ft., and the off-premise pole sign can be 700 sq. ft. and 45' high as opposed to 300 sq. ft. and 35' high.

Carlson believes the two issues are setback and signage. He sought clarification of the reason for the staff recommendation of denial. Horner advised that the H-3 zoning is inconsistent with the area; there is none in the near vicinity; the signage and the setbacks are inconsistent with the surrounding zoning as well.

Response by the Applicant

Hunzeker is dazzled by the off-premise sign discussion. We can't do an off-premise sign on this property because we are too close to both Hwy 77 and I-80 under the new regulations for off-premise signs. The big signs are not permitted on this property, and the rest is very similar. We have new regulations that apply to off-premise signs and they are not permitted within 800' of the Interstate or Hwy 77 (the entrance corridors).

Schwinn wondered whether the Interstate begins with the on-ramp. Hunzeker guaranteed that it does. But the issue for this applicant is not signs. It's just the use of the property. We don't care about having double frontage. Those signs takes up room in addition to costing money.

Steward asked for clarification of the neighbors to the west and the east. Hunzeker stated that the neighbor to the west is a Phillips 66 Station across 56th Street; the neighbor to the southwest is TO Haas Tire; the neighbor immediately south is the truck equipment service facility; and the neighbor to the east is tractor trailer sales. The Whitehead station across 56th Street has survived when the other did not.

Carlson wondered whether a change of zone to H-4 with a waiver of the setback requirements would require readvertising. Rick Peo of the City Law Department advised that there is no waiver allowed on a change of zone request.

Hunzeker pointed out that a lot of this property is taken up by yards. H-4 simply doesn't work for that reason, and the uses are the same. We have the ability with the H-1 to park in the front yard. We think that H-3 is a better use of the property and it is consistent with what's out there.

Carlson wondered whether there would be further public process for the specific use of the property. Hunzeker suggested that there could be a planned service commercial special permit, but that would be difficult for a parcel this size, and the other would be a flat variance to reduce the front yard setbacks on the property. However, he does not know that this is a situation that warrants a variance. The real issue is whether this zoning district is appropriate, and he thinks it is.

Schwinn noted that on the special permitting process there is a 2-acre minimum in residential districts. Does that count in commercial districts? Horner suggested that if the property is zoned H-3 there is no further review required for the specific use.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

December 12, 2001

Duvall moved approval, seconded by Schwinn.

Duvall thinks the applicant has their hands tied and this will give them some flexibility to utilize the property.

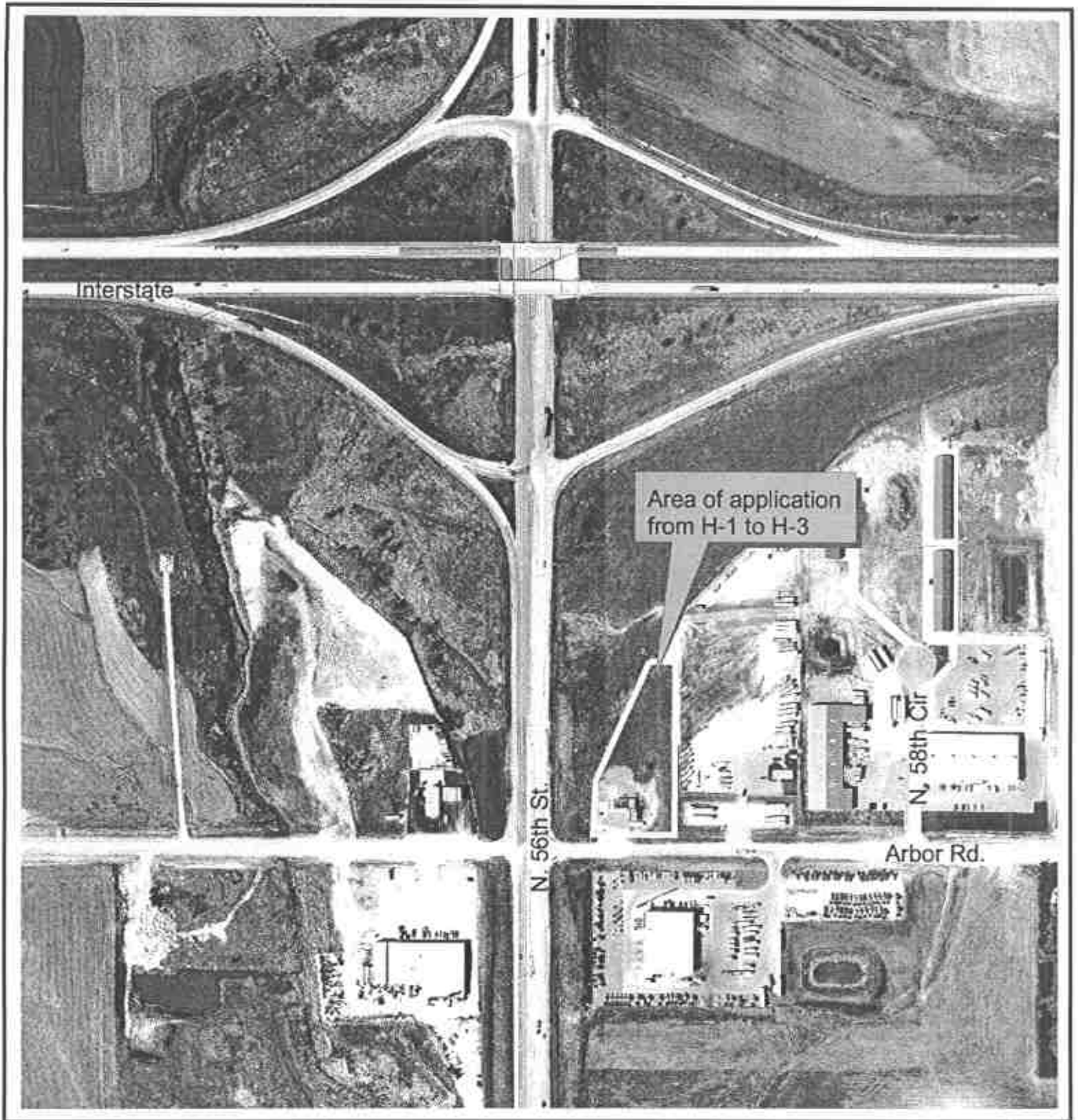
Schwinn added the fact that the property has so much frontage on it. One-fourth acre is the difference in the setbacks, so it is a hardship that would be put on the property owner to go to H-4. Movement out of H-1 gives them more flexibility economically and more viability.

Noting that the property has been zoned H-1 for some time, Steward assumes the property owner knew what the zoning was when he purchased the property and understood the options. However, in terms of planning, he does not see that this request is out of line with both what's already out there and the general Comprehensive Plan, none of which ever should have happened to begin with in this entrance corridor. This last piece of property has a highway quasi-industrial use. He does not think it is going to make the entrance on Hwy 77 any more or less attractive.

Carlson is sympathetic to the setback. He brings up the signs because a future owner might make use of the zoning with the double frontage for signs.

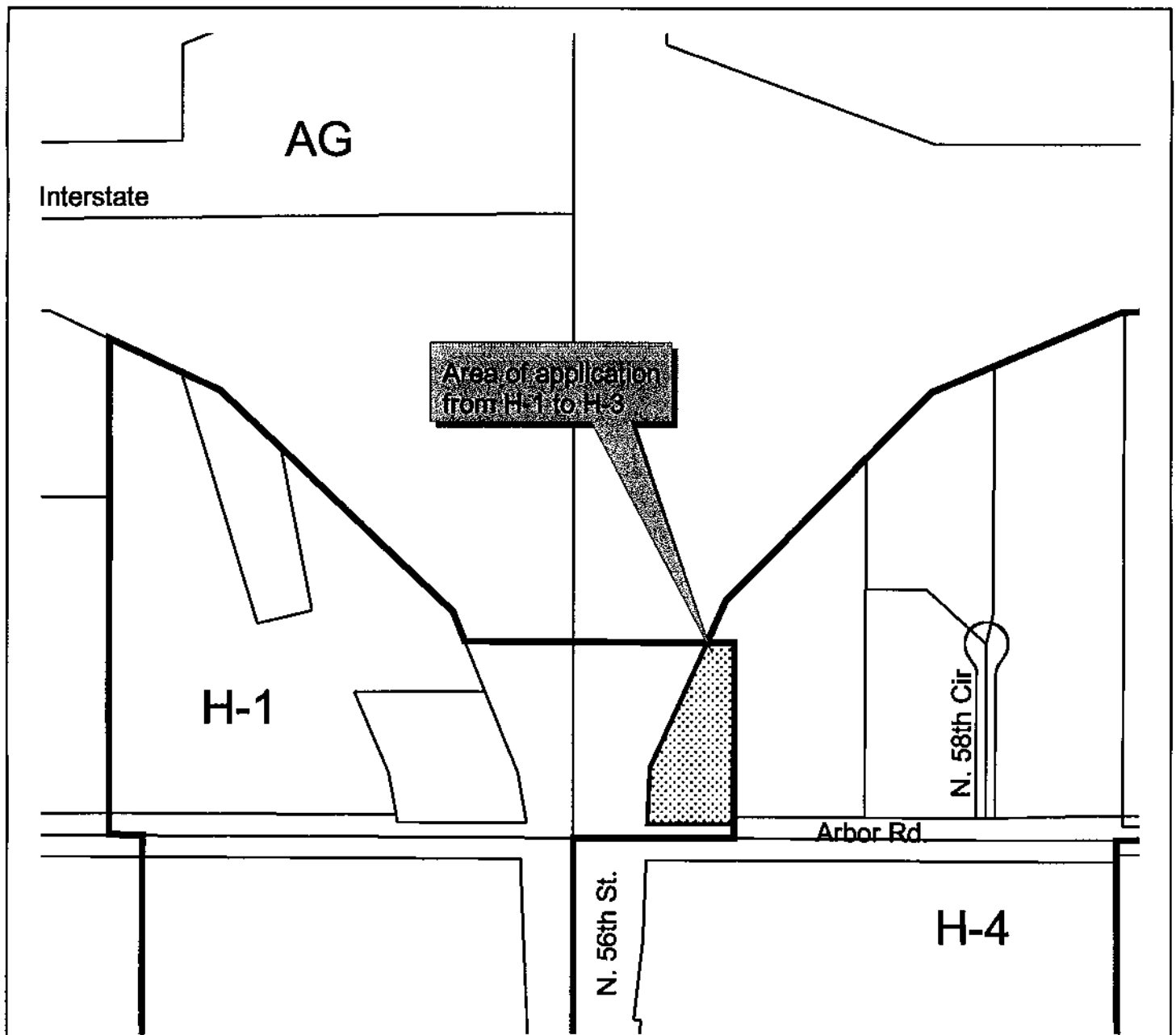
Taylor commented that in this instance he doesn't see any opposition and he thinks the applicant made an interesting point that there is not that much difference in the H districts. He does not see any reason not to change it to H-3. He will vote in favor because he does not have enough information to tell him this would be a bad change.

Motion to approve carried 8-0: Steward, Newman, Krieser, Taylor, Carlson, Hunter, Duvall and Schwinn voting 'yes'; Bills absent.



**Change of Zone #3345
56th & Arbor Rd.**



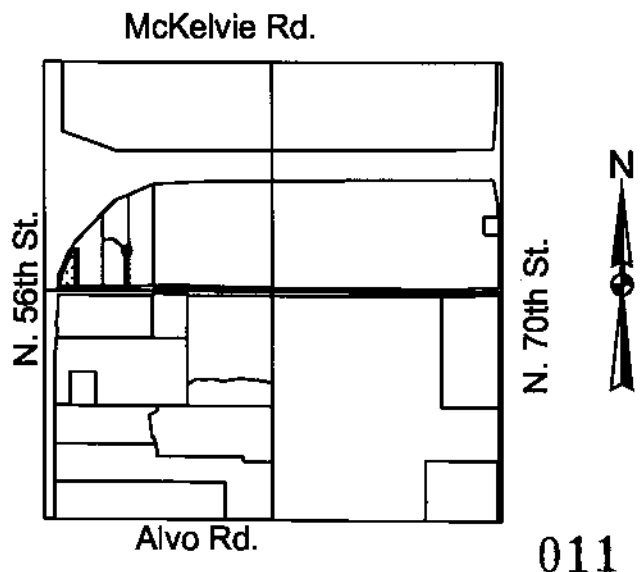
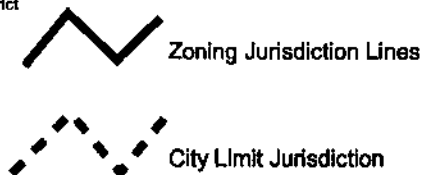


Change of Zone #3345 56th & Arbor Rd.

Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 28 T11N R7E



ITEM NO. 1.2: CHANGE OF ZONE NO. 3345
(p.13 - Consent Agenda - 11/14/01)
PIERSON, FITCHETT, HUNZEKER, BLAKE & KATT
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November 12, 2001

VIA HAND DELIVERY

Jean Walker
Planning Department
555 S. 10th Street
Lincoln, NE 68508

Re: Change of Zone No. 3345


Dear Jean:

In follow up of our telephone conversation on November 9, 2001, please revise the application for Change of Zone No. 3345 to request a change in the zoning district map from H-1 to H-3 (rather than H-4 which was indicated on the original Petition to Amend the Zoning Ordinance filed by Mark Hunzeker on October 4, 2001) on property legally described as Lot 17 I.T. NW 1/4 of Section 28, Township 11 North, Range 7 East of the 6th P.M., Lancaster County, Nebraska.

We also request that you continue the hearing on Change of Zone No. 3345 from its originally scheduled date of November 14, 2001, until December 12, 2001, which will allow for republication of the required notices and revision of the staff report.

If you have any questions or concerns, please let me know.

Sincerely,

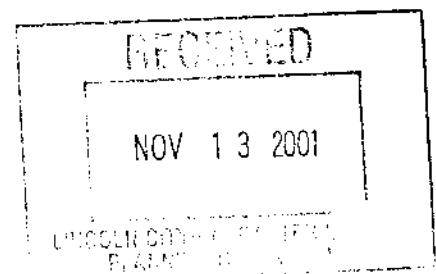


Michael T. Johnson
For the Firm

MTJ:la

cc: Mark Hunzeker
Mark Whitehead

(G:\WPData\MJ\Whitehead 509-001 Walker ltr.wpd)



012

SETBACK MAP

H-4
H-3

SUBMITTED AT PUBLIC HEARING
BEFORE PLANNING COMMISSION: 12/12/01
BY MARK HUNZEKER ON BEHALF OF THE
APPLICANT

